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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/833,301	04/10/2001	Valery A. Petrushin	10022/151	2957

33391 7590 05/26/2004

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INDIANAPOLIS, IN 46204

EXAMINER
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TIEU, BENNY QUOC

ART UNIT	PAPER NUMBER
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2642

DATE MAILED: 05/26/2004

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/833,301

Applicant(s)

PETRUSHIN, VALERY A.

Examiner

Benny Q. Tieu

Art Unit

2642

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: (see attached sheets).
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 2-4.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Benny Q. Tieu  
Primary Examiner  
Art Unit: 2642

Art Unit: 2642

Examiner has reviewed all portions of the specification indicated by Applicant where the Applicant states support for the claimed invention is found. However, Examiner believes that Applicant's specification does not support the claimed invention.

Applicant argues that the specification, page 26, lines 21-23, supports claims 2-4. Page 26, lines 21-23, states that "The alarm could also be connected to a recording device which would begin recording the conversation when the alarm was set off, if the conversation is not already being recorded." (emphasis added). There are two assumptions, the first assumption is that the conversation is not being recorded when the alarm was set off (of course, because the level of nervousness goes above a pre-determined level), then the recording of conversation will begin. In this case, clearly, the level of nervousness is determined not based upon the "pre-recording of a first portion of a telephone call" as claimed in the claims 2-4. Now, the second assumption is that the conversation is being recorded when the alarm was set off because the level of nervousness goes above a pre-determined level. In this case, the recording will simply continue and this means<sup>5</sup> that the recorded portion is not used for the purpose of determination the level of nervousness in order for the alarm to be set off as claimed. Therefore, Examiner concludes that page 26, lines 21-23, does not support the limitations of claims 2-4.

Page 34, lines 20-23 (Applicant's specification) is directed to an apparatus for producing visible records as shown in Fig. 9. Nothing deals with "pre-recording a first portion of a telephone call" and said first portion being used to determine whether or not a second portion is to be recorded as claimed.

Page 57, lines 2-6 (Applicant's specification) is directed to grouping voice messages in a mailbox based on the negative emotions (e.g. sadness, anger or fear). Again, nothing deals with

Art Unit: 2642

“pre-recording a first portion of a telephone call” and said first portion being used to determine whether or not a second portion is to be recorded as claimed.

Page 26, lines 17-21, states “As another option, the indication ... searching for fraud.” Again, nothing deals with “pre-recording a first portion of a telephone call” and said first portion being used to determine whether or not a second portion is to be recorded as claimed.

Page 25, lines 23-28, states “The voice signals are analyzed.... before the person leaves.”. Page 35, lines 27-29 and page 36, lines 12-16 are directed to screening the conversation. Again, nothing deals with “pre-recording a first portion of a telephone call” and said first portion being used to determine whether or not a second portion is to be recorded.

Further, Applicant argues on page 3 of the remarks that the first step (pre-recording a first portion) and second step (determining whether said first portion) of claims 2-4 “may be construed such that the first step and second step occur simultaneously and be performed completely independently”. Examiner respectfully disagrees. The purpose of the first step is to be used for the second step as in the claims. Based on Applicant’s interpretation, the first step is not necessary, and it may cause “112 rejection” issue. Moreover, in each of claims 2-4, each of the steps are indicated as sequence steps, e.g. (a), (b) or (c), etc. It is impossible to consider these steps occur simultaneously and be performed completely independently. Note that (b) uses (a), and (c) uses (b). the sequence is clear in claim 2 as well as in claims 3 and 4.

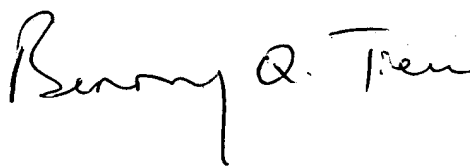
Also on page 3 of the Remarks, Applicant states “In addition, each of the Claims do not .... Thus, the method could possibly be interpreted to include recording the first speech portion and continuing on to record the second speech portion as one continuous recording, so long as the monitoring condition is satisfied.” The Examiner respectfully disagrees with this

Art Unit: 2642

interpretation. Pre-recording a first portion is completely different from continuous recording. The claims clearly recite the feature of whether or not the second portion is necessary to be recorded based on the first portion. Applicant's interpretation is that the whole conversation is anyway recorded.

To summarize, the claims require a "pre-recording" which is positively, always and unconditionally used for the determination to decide to record a second portion of the conversation. There is no condition ("if" is used in specification, page 26, lines 21-23) in the claims and the pre-recording is always a must. Beginning to record, or continuing to record as described in the specification is different from "pre-recording a first portion" and then determining to "record a second portion". In the specification, there is never two portions. Either begin to record or continue to record one portion only.

In conclusion, Examiner believes that claims 2-4 are NOT supported by the specification and Examiner maintains the rejection under 35 U.S.C. 112, first paragraph.



**BENNY TIEU  
PRIMARY EXAMINER**